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Supreme Court of the United States  
OCTOBER TERM, 1970

Nos. 910 and 961

ALLIED CHEMICAL & ALKALI WORKERS  
OF AMERICA, LOCAL UNION NO. 1, *Petitioner*

v.  
PITTSBURGH PLATE GLASS COMPANY,  
CHEMICAL DIVISION, *ET AL.*

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.  
PITTSBURGH PLATE GLASS COMPANY,  
CHEMICAL DIVISION, *ET AL.*

ON WRITS OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

BRIEF FOR THE  
AMERICAN FEDERATION OF LABOR  
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS  
AND FOR THE  
INTERNATIONAL UNION UAW  
AS AMICI CURIAE

Pursuant to Rule 42 of the Rules of this Court the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), and the International Union UAW, file this brief *amici* in support of the position of the petitioners with the consent of the parties.

INTEREST OF THE AMICI

The AFL-CIO is a federation of one hundred and twenty-one affiliated labor organizations having a total membership of approximately thirteen and one half million working men and women. It is thus the majority spokesman for organized labor. The International Union UAW, with a membership of over one million five hundred thousand is the nation's largest industrial union.

The instant case presents a major question as to the proper scope of bargaining on a basic issue—retirement benefits. This major question has been erroneously decided. The nature of the subject matter demands that bargaining over retirement benefits be a continuous process. The lower court's opinion (A. 183-200), however, creates an artificial restriction on bargaining which will have a substantial adverse practical impact on labor-management negotiations involving this subject. The decision below is also unsound in its overall approach. It pretermitted bargaining covering a subject of importance to employees within the unit, with the acknowledged representative of those employees, because it was determined that the result would have an impact on other persons. If this view gained acceptance countless subjects of discussion important to labor and management will be removed from the bargaining table if either party declines to discuss it, thereby narrowing the scope of bargaining to a point at which the ultimate aims of the National Labor Relations Act would be thwarted. Collective bargaining is the primary function of the Federation's affiliates and the UAW. Thus the *amici's* interest in the instant proceeding is manifest.

#### **ARGUMENT**

In the instant case the National Labor Relations Board determined that the National Labor Relations Act imposes a duty on employers to bargain with the acknowledged representative of their active employees concerning changes in benefits payable to their retired employees. As one of two separate grounds of decision the Board concluded that:

"Independent of our finding that retired workers are 'employees' we also conclude that the subject of retirement benefits for retired employees is embraced by the bargaining obligation of the statute because it vitally affects active bargaining unit employees." (A. 38).

The Sixth Circuit, however, in overturning the Board's decision, declared that the Act "limits the employer's bargaining obligation to 'his employees' . . . who are in the bargaining unit." (A. 195-196). In light of these conflicting rulings regarding the scope of the statutory duty to bargain,

the case turns, as the Company acknowledges, on whether:

"Section 8(a)(5) specifically provides that mandatory bargaining is limited to 'employees' of the particular employer, and, by reference to Section 9(a), further restricts bargaining to the 'unit' established as appropriate for such purposes." (Co. Br. in Opp. No. 910, p. 7).

The restrictive view of the scope of the mandatory subjects of bargaining championed by the Company and adopted by the court below is based on a failure to distinguish between two analytically distinct aspects of the bargaining obligation imposed upon employers, is contrary to this Court's decision in *Teamsters Union v. Oliver*, 358 U.S. 283, is supported neither by the language of the Act nor by the prior precedents on which the Company relies, and produces results which are contrary to the basic policy of the Act—as we shall now demonstrate.

1. The duty to bargain in §8(a)(5) has two elements: first, to recognize the "individual or labor organization . . . designated or selected . . . [as] the exclusive representative . . . for the purposes of collective bargaining by the majority of the employees in [an appropriate] unit"; and second, to bargain collectively with that representative in the manner defined by §8(d) which provides:

" . . . to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any questions arising thereunder."

In the present case, there is no question that the Company had an obligation to recognize the Allied Chemical Workers' Union as the exclusive bargaining representative of the Company's employees; this is true whether or not the retirees are employees, for the actives certainly are. Indeed, the Company does not deny that it had the obligation to recognize the Union as the representative of the active em-

ployees. But the Company argues that it was privileged not to bargain with that representative about the benefits to be paid to retirees. This is not a question of recognition but of the scope of the content of collective bargaining. Thus, the pertinent language to be construed here is that of §8(d), not that of §8(a)(5). In terms of the precedents in this Court, the issues are those considered in *Teamsters Union v. Oliver*, 358 U.S. 283, and *Fibreboard Paper Products Corp. v. Labor Board*, 379 U.S. 203, not those involved in *NLRB v. Gissel Packing Co.*, 395 U.S. 575.

The definition of "employee" and the concept of bargaining unit are relevant, indeed indispensable, for determining the first of these duties, that is, the duty to recognize. As stated in *Phelps Dodge v. Labor Board*, 313 U.S. 177, 192:

"In determining whether an employer has refused to bargain collectively with the representatives of 'his employees' in violation of §8(5) and §9(a), it is of course essential to determine who constitute 'his employees.' One aspect of this is covered by §9(b) which provides for determination of the appropriate bargaining unit."

Both the phrase "his employees" in §8(a)(5) and the concept of appropriate bargaining unit in §9(a) are inherent in the majority principle which governs recognition of representatives. The answer to the question "majority of what" is "his [the employer's] employees in an appropriate bargaining unit."

Those terms, however, have nothing to do with the subjects about which the representative and the employer must deal once the identity of the representative is determined. The definition of the content of bargaining in §8(d) does not even contain the words "appropriate bargaining unit." And, of course, logical analysis does not compel the conclusion that the duty to bargain about "wages, hours and other terms and conditions of employment" must be rigidly restricted to regulation of the employer's dealings with the unit employees. Indeed, and to us this is the essence of the matter, such a rigid rule would be profoundly destructive

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of the paramount policy of the Act—"to encourage the practice and procedure of collective bargaining," §1. For that policy requires that "problems of vital concern to labor and management [be brought] within the framework [of collective bargaining] established by Congress as most conducive to industrial peace," *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 212. And such problems are not cabin'd according to the electoral districts declared to be bargaining units.

This insight into the practical realities of collective bargaining governed this Court's construction of §8(d) in *Teamsters Union v. Oliver*. The holding of that case was subsequently explained by its author, Mr. Justice Brennan, in terms which are particularly instructive here:

"*Local 24 of Inter. Broth. of Teamsters, etc. v. Oliver*, 358 U.S. 283, did not, as appellees suggest \* \* \*, hold that owner-operators are in any sense 'employees.' That case held that a bargaining unit including an overwhelming majority of concededly employed drivers of carrier-owned equipment was entitled, under §8(d) of the National Labor Relations Act, \* \* \* to bargain to impasse concerning minimum rentals to be received by owner-drivers. It was not necessary to determine whether the owner-drivers were 'employees' protected by the Act, since the establishment of the minimum rental to them was integral to the establishment of a stable wage structure for clearly covered employee-drivers. See *id.*, at 294-295." *United States v. Drum*, 368 U.S. 370, 382, n. 26.

Similarly, it is not necessary to determine in this case whether retirees are employees protected by the Act, since, as the Board properly found, see pp. 12-15 *infra*, the establishment of their benefits is "integral to the establishment of" retirement benefits of active employees.

2. The Company claims that "the decision of the court below finds solid support" in five particulars (Co. Br. in Opp. in 910, p. 10). We now show that each of these is without merit.

Point 1 is that support is to be found in:

“The language of Section 8(a)(5) which restricts the employer’s bargaining obligation to ‘his employees’ and further makes the obligation subject to Section 9(a).” (Co. Br. in Opp. in 910, pp. 10-11).

But this misreads the “language of Section 8(a)(5)”:

“It shall be an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees, subject to the provisions of §9(a).”

As already noted, p. 4 *supra*, the office of the language in the body of §8(a)(5) is to declare with whom the employer must bargain: “the representative of his employees”. Moreover, the final clause of that section (“subject to the provisions of §9(a)”) was necessary, because the term “representative” as defined in §2(4) is not limited to the exclusive bargaining representative, see, *U.S. v. Ryan*, 350 U.S. 299. If the duty imposed by §8(a)(5) had not been made “subject to the provisions of §9(a),” employers would be required to bargain also with a representative chosen by a minority within a unit, even if a majority in that unit had chosen some other representative, thereby undermining the exclusive status of the majority representative. Thus, the reference to §9(a), like the preceding portions of §8(a)(5), is directed solely toward providing the answer to the question “who is the employer obliged to recognize?”<sup>1</sup>

<sup>1</sup> The legislative history of the clause, though sparse, confirms this analysis. This language appeared in the original version of what became § 8(5) of the Wagner Act which was presented to Congress by Francis Biddle, then Chairman of the pre-Wagner Act National Labor Relations Board:

“The practical side of majority rule is that neither can an employer deal with any chance of success with a group of representatives nor can any union stand any chance of success if there are other competing unions in the field. It is absurd to talk about trying to enter into a collective agreement with half a dozen people with divergent views and different points of view in the field; and, just as the employer has the unity and power of the individual, so labor should have the unity and power of the single representation. So much for majority rule.

“Now, who is to determine the unit in which the majority should govern? That seems to me to be well handled in this bill \*\*\* and although it does put greater power into the hands of the board \*\*\* it is subject to review by the courts and it seems to me that is essential that it should remain in the board.

Yet the Company's point 2 (Co. Br. in Opp. in 910, pp. 10-11) is that selected passages from four opinions, *Phelps Dodge, supra*, 313 U.S. at 192; *Page Aircraft*, 123 NLRB 159, *Piasecki Aircraft*, 123 NLRB 348, *enforced* 280 F.2d 575 (C.A. 3), *certiorari denied*, 364 U.S. 933, and *Briggs Mfg.*, 75 NLRB 569, support its construction of §8(a)(5). The only point made by these four passages is that a controversy as to majority status must be settled by determining the preferences of employees of the employer in question and not of employees generally. This is a point which we readily accept,<sup>2</sup> but one which does not meet the issue

"I would like to say one specific thing about the bill before I leave the subject of collective bargaining: That is the corresponding duty on the part of the employer to bargain collectively. \*\*\*"

"I suggested to the committee and I think that the Senator [Mr. Wagner] has taken cordially to the suggestion that there be inserted a subdivision (5) of section 8 the following clause —section 8, you will remember, outlines what shall constitute unfair labor practices. It specifies that—

'It shall be an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7—'

"And so on, and the last subdivision of that section provides that you must not discharge or discriminate against an employee who has filed charges or given testimony. Now, there at that period I would add the following as subdivision (5):

'To refuse to bargain collectively with the representative of his employees subject to the provisions of 9(a)'

"and section 9(a) is the section defining majority rule, that the specific matters are that it is an unfair labor practice for an employer to refuse to bargain collectively with the representatives of the majority, and as I have said, I think it is dangerous to imply anything in a bill." II Legislative History of the National Labor Relations Act of 1935, pp. 2649-2650 (emphasis supplied).

There is no suggestion that Mr. Biddle's proposal that the employer's duty to meet with the exclusive majority representative of his employees be expressly declared in the law he was seeking to limit the scope of bargaining subjects or to protect persons *outside* the bargaining unit. Nothing further was said about this clause in the hearings or the floor debates; and it was left unchanged by the 1947 and 1959 amendments.

<sup>2</sup> Of course, we doubt that even the Company would insist that § 8(a)(5) is to be read restrictively in all instances. Thus, where a multi-employer unit is appropriate, bargaining must be with the representative of a majority of "their" employees. And where the unit is less than employer-wide, the representative will not necessarily have a majority of "his" employees.

here which is whether bargaining about persons outside the unit is a mandatory subject. This distinction between recognition questions, and questions concerning the content of bargaining, is central to the instant case. And as we have shown, p. 4 *supra*, the very passage from *Phelps Dodge* on which the Company relies, demonstrates that the "his employees" phrase in §8(a)(5) deals only with the element of recognition. The *Page Aircraft* and *Piasecki Aircraft* cases also use this language solely in a recognition context.<sup>3</sup> The *Briggs* case, *supra*, is even further afield, for it arose under §8(a)(4), and its reference to the same language, merely follows *Phelps Dodge* in *dictum*.

The Company next relies (Co. Br. in Opp. in 910, p. 11) on the language of § 9(a) which allegedly restricts bargaining to the "unit appropriate for such purposes." There is no such language.<sup>4</sup> We have already noted that insofar as §9(a) is incorporated in §8(a)(5), which is the section the Company is charged with violating, it relates only to the recognition issue and does not bear on the content of the bargaining obligation.

The relevance of the Company's point 4 (Co. Br. in Opp. in 910, p. 11) that retirees would not be permitted to vote in a Board representation election, depends on the basic con-

<sup>3</sup> We do not wish to be understood as accepting either the reasoning or the result in *Page Aircraft*. In the course of its decision in *Page Aircraft* (123 NLRB at 163 n. 5), the Board said:

"The antidiscrimination provisions refer to 'employees' generally, whereas unlike these provisions, §8(a)(5) contains specific language requiring an employer to bargain for 'his' employees."

But contrary to this passage, there is no "specific language" in §8(a)(5) which so requires. That section provides only that the employer shall bargain with "the representative of his employees." Indeed, under the Act an employer bargains only for himself and with or against his employees' representative. He does not under any circumstances bargain "for" his employees. Because of such faults of analysis *Page Aircraft* has been overruled in its pertinent aspect by *Chemrock Corp.*, 151 NLRB 1074, 1080, n. 8.

<sup>4</sup> The pertinent portion of § 9(a) reads:

"Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining . . ."

tention that bargaining can affect only those employees who are in the bargaining unit and therefore have a voice in selecting the representative in question. But this premise is refuted by the holding in *Oliver*, 358 U.S. at 293-295. Moreover, it is inconsistent with the decisions<sup>5</sup> which hold that the hiring hall is a mandatory subject of bargaining since persons who have not previously been employed are not in the bargaining unit and are ineligible to vote. Similarly, the employees of a potential subcontractor are not eligible to vote in an election to determine the representative of the employees of the potentially subcontracting employer; yet they are affected by bargaining about subcontracting which *Fibreboard* holds is mandatory, 379 U.S. at 210-213.

Finally, the Company cites *Mine Workers v. Pennington*, 381 U.S. 657, 666, as holding that bargaining must be conducted on a "unit by unit" basis; and the *I.L.A.* cases (*I.L.A. v. NLRB*, 277 F.2d 681 (C.A.D.C.); and *Douds v. ILA*, 241 F. 2d 278 (C.A. 2)), for the proposition that "the scope of the bargaining unit limits and controls the bargaining process," (Co. Br. in Opp. in 910, p. 12).

We submit the Court did not intend the term "unit" as used in *Pennington* to encompass the full range of possibilities, as set forth in § 9(b) of the Act<sup>6</sup> but referred only to employer-wide and multi-employer units.<sup>7</sup> *Pennington* was, after all, an antitrust case involving multi-employer bargaining, so that the lesser bargaining units described in § 9(b)(1) were wholly irrelevant. And the focus of the opinion is, therefore, on the danger that the union would, by agreement, give preference to one group of employers over another group (381 U.S. at 668-669). Indeed, the sen-

<sup>5</sup> *NLRB v. Houston Chapter Associated General Contractors*, 349 F. 2d 449 (C.A. 5), certiorari denied, 382 U.S. 1026; *NLRB v. Tom Joyce Floors*, 353 F. 2d 768 (C.A. 9); cf., *Local 357 Teamsters v. Labor Board*, 365 U.S. 667, 676-677.

<sup>6</sup> "The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."

<sup>7</sup> Compare the Court's use of the term later in the opinion:

"It is just such restraints upon the freedom of economic units to act according to their own choice and discretion that run counter to antitrust policy." 381 U.S. at 668.

tence immediately following that which the Company quotes, shows by its reference to "the favored employers," that the *Pennington* opinion was not concerned with separate bargaining units of a single employer. Finally, the Board cases cited in *Pennington's* discussion of "the national labor policy" all deal with multi-employer situations. And the discussion of those cases plainly supports our reading of the opinion's references to "unit."

The rule set forth in those cases, as stated by the Court, is that, "So far as the employer is concerned it has long been the Board's view that an employer may not condition the signing of a collective bargaining agreement on the Union's organization of a majority of the industry," (381 U.S. at 667). This Board view was of particular relevance in the antitrust context of *Pennington* because the employer's interest in making such demands is to protect "his competitive position" (381 U.S. at 666). In contrast, there is no relevance for antitrust policy in the rule the Company seeks to read into *Pennington*. Moreover, as the Court noted approvingly, *Newton Chevrolet*, 37 NLRB 334, 337, and its companions, prevent "frustration of the fundamental purpose of the Act, to encourage the practice of collective bargaining" (381 U.S. at 667). But the rule which the Company would extract from *Pennington* would seriously impede collective bargaining, see, pp. 12-15 *infra*. In addition, *Pennington* understood the duty to bargain "unit-by-unit" to exist for the benefit of the employees within the unit:

"The union's obligation to its members would seem best served if the union retained the ability to respond to each bargaining situation as the individual circumstances might warrant, without being straitjacketed by some prior agreement with the favored employers." 381 U.S. at 666.

Yet, under the Company's expansive reading of *Pennington*, unit employees would lose their § 7 right, *Oliver*, 358 U.S. at 295, to bargain about the full range of subjects vitally affecting their interests if such bargaining affects individuals who are outside the unit.

The *ILA* cases (both of which arose out of a single set of circumstances) do not conflict with our theory. The union made no claim there that its demand bore on the wages, hours or working conditions of the employees in the certified unit, rather its demand admittedly was for representational rights *as such* which are not within § 8(d). Under *Labor Board v. Borg-Warner*, 356 U.S. 342, therefore, the union's insistence on recognition in some other unit as a condition of entering into an agreement in the certified unit was a violation of the Act.<sup>8</sup> Thus the *ILA* cases merely illustrate that it is essential in characterizing bargaining demands, and evaluating the parties rights and duties with respect thereto, to preserve the distinction which we have emphasized herein between the two separate issues which arise under § 8(a)(5), see, pp. 3-5 *supra*.

The foregoing demonstrates that *ILA* is not authority for the restrictive view of § 8(d) adopted by the court below. Nevertheless, since it can be done briefly, it should be pointed out that the rationale of the *ILA* opinion is unsound, and should not be accepted, even *arguendo*, by this Court. There is no basis in the Act for the reasoning that the *ILA*'s insistence on its demand was unlawful merely because it would "vitiate the Board's certification" (118 NLRB at 1491). One example will suffice to show the incongruous results which that theory produces. This Court has repeatedly recognized (most recently in *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 596-597, following *Mine Workers v. Arkansas Oak Flooring Co.*, 351 U.S. 62) that the Board's certification processes are not exclusive, and that § 8(a)(5) imposes an obligation on employers to recognize the representative "designated or selected" by the majority. The *ILA* doctrine limits that § 8(a)(5) duty as declared by this Court. It forbids a union which is once certified in a small unit from insisting upon recognition in a broader unit even if the union enjoys a clear majority in the latter (118 NLRB at 1490). This accords certifications, which were never intended to em-

<sup>8</sup> The *ILA* itself recognized this in its brief to the D.C. Circuit after the Board's decision, where it asserted only that it had not insisted on a contract recognizing it as the representative of the employees outside the certified unit, see, Brief of Petitioner, CADC No. 14985, p. 20-26.

body an absolute and unchangeable ideal basis for bargaining (see, e.g., *Motts Supermarkets*, 182 NLRB No. 19, 74 LRRM 1023 n.3), an independent force for which there is no statutory warrant. For the purpose of § 9(b) is to provide a mechanism to set collective bargaining in motion); not to restrict its scope.

3. Since, as demonstrated above, the controlling legal principle here is that stated in *Oliver* all that remains is to show that bargaining on the benefits to be paid retirees is "integral to the establishment" of the presently active employees' retirement benefits.

The Company argues that:

"The theory that bargaining for retirees is necessary to protect the bargaining interests of 'active' employees in their own retirement benefits is conceptually false.... There is nothing to suggest that active employees are handicapped or hampered in any degree in negotiating their own retirement benefits by their inability to demand renegotiation of the benefits of those who have already retired." (Co. Br. in Opp. in 910, p. 9, emphasis in the original).

It is the Company's argument which is conceptually and factually false. For the point of the matter is that active employees would be hampered in negotiating their own retirement benefits by a rule which prohibited their representative from demanding changes in *their* benefits after *they have retired*. And the Sixth Circuit's decision establishes just such a prohibition. Active employees do not stay active forever, eventually they become retirees. Thus, what is at stake here is not the right of a static group of actives to bargain about the benefits of a static group of retirees; rather it is the right of a changing group of actives to insist on a process of continuous negotiation on the ground that it alone is suitable to dealing with the manifold problems incident to the payment of their future benefits for work they have performed, cf, *Inland Steel Co. v. NLRB*, 170 F.2d 247, 253 (C.A. 7), *certiorari denied*, 336 U.S. 960.

The actual value of his future benefits to the retiree when he becomes entitled to them is dependent upon many condi-

tions and circumstances which the bargaining parties cannot anticipate and over which they have no control. Monetary inflation is one of these. Public law is another. There is an intimate and unavoidable interrelationship between the negotiated benefits and those which the retiree receives by virtue of public law. The shifting levels of Social Security payments and Medicare benefits are obvious examples. It would not be even theoretically possible for unions and employers to anticipate the nature and level of public benefits which retirees can expect and duplication of which would create costs to the employer without commensurate value to the retiree. Who, for example, in negotiating retirement benefits during, say the first 10 years after *Inland Steel*, could have anticipated the enactment of Medicare or its precise form; and who can tell today how much Social Security eligibles will receive monthly in 1980? To expect the parties to plan for such contingencies is, in Justice Holmes' words "to exact gifts that mankind does not possess," *International Harvester Company v. Kentucky*, 234 U.S. 216, 224. Even if the union and employer are in agreement regarding the costs which the employer shall bear, they may reasonably differ as to their economically soundest allocation. Similarly, they may well differ as to the costs of a promise to provide certain minimum benefits. These are issues affecting the ultimate security of the worker, and they involve substantial costs to the employer. If active employees know that collective bargaining cannot obtain improvements for them once they retire, the lengthy and disruptive strikes over judgments which by their nature must be largely speculative will be inevitable.

It should be noted further that the employer's agreement to pay pension benefits is only the first half of the matter. It is also essential that adequate monies to pay the monthly pension benefits be available as they come due. The traditional mechanism for financing pensions is the "pension fund," to which the employer makes periodic contributions. Because most collective bargained pensions plans give the employer considerable time to reach complete funding (the median period is approximately 30 years), it is almost invariably true that at the moment an employee retires the

employer will not have yet contributed the full amount necessary to pay his pension for the rest of his life. Normally the employer anticipates contributing to the fund on a regular basis to provide the monies to pay that pension. Periodic reviews of the financial health of the pension fund are therefore essential to assure that it will be adequate to provide pension payments as they come due. After such a review the union may conclude that an employer's rate of contribution is too slow, or the union may find that the investment of pension monies has resulted in losses. If these eventualities arise the union may, through bargaining, insist on requiring an additional contribution.

The fact that every contribution the employer makes goes into a single fund, from which benefits will be paid to eligible retirees, regardless of whether they were active or retired at the time the payments were made, is perhaps the most striking evidence of the artificiality of the view of bargaining adopted below. The size of the employer's contribution is his main stake in the amount of benefits and in establishing eligibility—it is, in a word, his cost. Yet until the time that the plan is completely funded, it is a logical impossibility to bargain about that contribution without bargaining about the interests of persons already retired. Only after funding is complete does every cent contributed go to provide payments to persons presently employed—and then only if the benefits of those already retired remain constant.

The sum of the matter, as the Board stated, is that:

"Forced reliance on fixed, preretirement formulas has shortcomings which may lead to disappointing results in the operation of a plan. There may be a variety of changes in the experience of the covered group or in the operation or administration of the plan itself which the parties cannot foresee. The changing value of the dollar, rising medical costs, and other economic developments might alter the real level of benefits envisaged by the original formula. The parties may also reappraise their feelings as to the fair economic share owing to retired workers, just as society itself periodically reexamines its commitments to the elderly. In addition,

insurance and health care plans are constantly developing new features and refinements.

"With respect to new problems which arise under a health insurance plan for retired employees, collective bargaining is not only a suitable method for exploring digerent solutions, but it is probably the most rational and effective method. A plan which has its inception in the collaborative process of a labor-management agreement reflects the assumptions, arguments, and aspirations—as well as the compromises—of the parties to that process. While the process of collective bargaining does not guarantee that its agreements will be wise, the process does help to assure the acceptability of those agreements because they were reached through the participation and the commitment of the parties most affected. Moreover, to deny collective bargaining a role in the development of health benefits plans for retired employees might undermine their viability." (A. 40-41).

### **CONCLUSION**

For the above stated reasons as well as those developed by the Union and the NLRB, the judgment of the court below should be reversed and the case should be remanded to that court with directions to enforce the Board's Order.

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